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IN THE

Supreme Court of the United States

October Term, 1959

No. 806

LIONEL RICHMAN,

Petitioner in Pro. Per.,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Reply to Petition for Writ of Certiorari to the Appellate Department of the Superior Court of the State of California in and for the County of San Bernardino.

This brief replies to contentions of a petition for certiorari to review a criminal case which arose in the County of San Bernardino, California. Petitioner was convicted in the Justice Court, Redlands Judicial District, of violating the parking meter ordinance of the City of Redlands. The court imposed a fine of five dollars ($5.00). Appeal was taken to the Appellate Department of the Superior Court in and for the State of California. In a memorandum opinion issued January 14, 1960, the judgment was affirmed. The petition for review of this opinion was filed on March 21, 1960.

Opinions Below.

The memorandum opinion of the Appellate Department of the Superior Court affirms the judgment of the trial court.

Questions Presented for Review.

1. Do Sections 6244 and 6246 of the Redlands Code raise a presumption which deprives petitioner of his liberty without due process of law, equal protection, or constitute a bill of attainder?

2. Do Sections 6244 and 6246 deprive petitioner of equal protection of the law?

Ordinances Applied to Petitioner by Trial Court.

1. "Section 6225: NONPAYMENT OF METER. It shall be unlawful between the hours of 9:00 a.m. and 6:00 p.m. on any day excepting Sundays and Holidays for any person to cause, allow, permit, or suffer any vehicle registered in his name or operated or controlled by him to be upon any street within a parking meter zone in any space adjacent to which a parking meter is installed at any time during which the meter is showing a signal indicating that such space is illegally in use (other than such time as may be absolutely necessary in entering and leaving such space to operate the meter)."

2. "Section 0311 VIOLATION; MISDEMEANOR. Any person who violates or willfully fails to comply with any provision of this code is guilty of a misdemeanor."

3. "Section 0313. PENALTY. Any person convicted of a misdemeanor under the provisions of this Code (unless otherwise provided herein) shall be punishable by a fine of not more than five hundred dollars ($500.00) or

by imprisonment in the City Jail or in the San Bernardino County Jail for a period of not more than six (6) months, or by both such fine and imprisonment.

Statement of the Case.

The petitioner, Lionel Richman, was accused of violating Section 6225 of the Redlands Parking Ordinance in a complaint filed in Justice Court of the Redlands Judicial District. It alleges as follows:

> "That said Lionel Richman . . . did willfully and unlawfully park that certain automobile, State License 0108980, on a public street in the City of Redlands, to wit: State Street in violation of a parking meter ordinance of the City of Redlands."

The trial court's minute order states that Richman appeared and was represented by his counsel, Lewis Garrett, at the time of arraignment. A true copy of the complaint was delivered to the defendant and read to him; he was asked whether he pleaded guilty or not guilty to the complaint. Without pleading, he made a written motion to dismiss the complaint on the grounds that Sections 6244, 6245, and 6246 of the Redlands Ordinance Code are contrary to the Fourteenth Amendment of the United States Constitution and Article 1, Section 13 of the Constitution of the State of California.

The motion was denied following argument by counsel and review of the points and authorities. Richman entered a plea of not guilty, waived a jury, and requested a court trial. He asked the court to consider the entire record, including the police report, communications and other information as evidence upon which to reach its verdict. The court found that an Austin Healy automo-

bile owned by Lionel Richman was parked overtime on State Street in the City of Redlands on February 28, 1959.

Richman was found guilty of parking in violation of Section 6225 of the Redlands Ordinance Code. The Court pronounced judgment immediately at Richman's request, and fixed a fine of five dollars.

Ordinance Does Not Deprive Petitioner of Due Process or Equal Protection of the Law nor Is It a Bill of Attainder.

The evidence that Petitioner parked his automobile in a metered space longer than the period allowed by the Redlands ordinance is undisputed. The court found the allegations of the complaint are true and entered judgment that the petitioner is guilty of violating Section 6225.

He contends that his conviction under this section is improper because the Redlands Code contains separate provisions which allow overtime parkers to deposit or mail sums to the city and waive court appearance. These sections, which the record shows were not alleged in the complaint or applied to petitioner by the trial court, are as follows:

> "Section 6244. PAYMENT BY VIOLATOR: Time and Amount—Any operator or owner of a vehicle for which a citation has been issued shall pay a penalty in the amount designated by the following schedule in full satisfaction of such violation:
>
> *Schedule*
>
> | *If Paid Within* | *Amount* |
> |---|---|
> | 24 hours | 50c |
> | 10 days | $1.00 |
> | 30 days | $5.00 |

"Section 6245. MANNER OF PAYMENT: Said payment may be made through receptacles designated for such purpose located within the metered area of the city or in person to the City Treasurer, City Hall, Vine and Cajon Streets, Redlands, or by mailing said penalty to above City Treasurer."

"Section 6246. NON PAYMENT: The failure of such owner or operator to pay said penalty within thirty days (30 days) shall subject such owner or operator to the misdemeanor penalty provided for the violations of the provisions of this code."

According to the petitioner, this procedure establishes a conclusive presumption of guilt from the mere issuance of a citation and that consequently his conviction of violating Section 6225 is contrary to the Fourteenth Amendment. (United States Constitution, 14th Amendment, Sec. 1) and a bill of attainder (United States Constitution Art. I, Sec. 10).

The judgment was based upon uncontradicted evidence. The court did not invoke any presumption of law. For this reason, petitioner's claim that his conviction is based upon an unconstitutional presumption is without merit. The constitutionality of sections other than the specific one under which he was convicted and sentenced is irrelevent in the present case.

One of petitioner's principal arguments is that Section 6246 allows the deposit of sums by violators of petty parking meter regulations, thereby inducing them to waive their right to arraignment and trial. Serving the convenience of persons who have parked overtime is plainly the purpose of the provision. This intention is even more clearly shown by Section 6245, which allows the mailing

or deposit of the charge at a city office. Such a mailing or deposit is not a penalty imposed for a violation of the Redlands ordinance.

The punishment for all misdemeanors is set forth in Sections 0311 and 0313, which provide:

> "Section 0311. VIOLATION: MISDEMEANOR. Any person who violates or willfully fails to comply with any provision of this Code is guilty of a misdemeanor."
>
> "Section 0313. PENALTY. Any person convicted of a misdemeanor under the provisions of this Code (unless otherwise provided herein) shall be punishable by a fine of not more than five hundred dollars ($500.00), or by imprisonment in the City Jail or in the San Bernardino County Jail for a period of not more than six (6) months, or by both such fine and imprisonment."

Petitioner was sentenced in accordance with these sections of the Redlands Ordinance Code after receiving a fair trial. As the record shows, no presumption was authorized by the ordinance or received as evidence to convict him. There is no legal or factual support for his claim that the judgment rests upon an unconstitutional presumption.

The Provisions Asserted to Be Invalid Are Severable.

Petitioner was convicted and sentenced in accordance with valid provisions of the Redlands Ordinance Code. These provisions are separate from the sections he contends are contrary to the Fourteenth Amendment of the United States Constitution.

Section 0217 of the Redlands Code provides:

> "Section 0217. PARTIAL INVALIDITY. If any chapter, article, section, sentence, clause or portion of this Code is for any reason held to be invalid or unconstitutional by any court, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof."

When the legislative body declares its intent, by a severability clause, that each part of its enactment stand or fall on its own merits, considerable weight is given such a clause. (*People v. Commons*, 64 Cal. App. 2d 925, 148 P. 2d 724, 729; *Lowe v. City Council of Augusta*, 45 Fed. Supp. 143). The rule is well settled, that, where a severability clause is provided, the valid portions of an ordinance will be upheld if the remaining portion is severable and constitutes a completely operative expression of the legislative intent. *Bacon Service Corp. v. Huss*, 199 Cal. 21, 32 (248 Pac. 235).

In *Carter v. Carter Coal Co.*, 298 U. S. 238, 338, 80 L. Ed. 1160, 1203, this court determined that certain provisions of the National Recovery Act were separable and said:

> "(A)ny declaration in respect of their validity or invalidity under the . . . constitution . . . will anticipate a controversy that may never become real. This being so, the proper course is to withhold any expression of opinion until expression becomes necessary."

We confidently assert that the provision violated by petitioner is a "separate, distinct and independent provision" as defined in the severability clause of the Redlands Code.

It is clear from this record that he did not attempt to bring himself within the provisions he contends are unconstitutional. He made no payment in accordance with either Section 6244 or Section 6246. Only Section 6225, prohibiting overtime parking and subject to the same punishment as other misdemeanor offenses, was applied to him. The constitutionality of Section 6225, standing alone, is unquestioned, and the judgment based upon the trial court's finding of a violation of this municipal law is proper.

Conclusion.

This petition makes the broad charge of unconstitutional encroachments upon the entire population of a municipality because the petitioner was tried and convicted of parking illegally.

Although his procedural rights were meticulously protected through arraignment, representation by counsel, the hearing of a motion to dismiss, entering of his plea, waiver of jury, court trial, proper sentencing and appeal, petitioner accuses the city of having the attitude "that if is too much of a nuisance to grant a trial to one charged with a minor traffic offense . . . the traditional contention of over-zealous police authorities." (Pet. p. 10).

Because he cannot show an improper application of the city parking law, petitioner premises his entire argument upon certain unrelated sections of the code which were not alleged in the complaint or applied by the court. These sections are the common provisions allowing overtime parkers to deposit sums of money and discharge their citations. There is no conclusive presumption of guilt raised in these sections. There is nothing in them to prevent any person from contesting the validity of the ordi-

nance or proving his innocence. The fundamental rule of construction in favor of constitutionality and the doctrine of separability compel the conclusion that the Redlands ordinance was properly applied to the petitioner.

For these reasons, no writ of certiorari should issue to the Appellate Department of the San Bernardino Superior Court to review its opinion affirming the lower court's judgment.

Respectfully submitted,

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City of Redlands,
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